SYARIKAT PREMA

v.

TASTAX RAYA SDN BHD

HIGH COURT MALAYA, KUALA TERENGGANU
NIK HASHIM J
[CIVIL APPEAL NO: 12-33-2000]
2 MARCH 2003

TORT: *Damages - Defamation - Indemnity - Whether appellant had right to indemnity - Whether respondent had legal or equitable duty to indemnify appellant*

This was an appeal by the appellant against the decision of the learned sessions court judge dismissing the appellant's claim that the respondent indemnify the appellant against any order made by the sessions court pursuant to a defamation action against the appellant and respondent for damages. The appellant contended that the alleged defamatory articles published in the Buletin Utama newspaper were printed by the appellant at the respondent's request and, therefore, by virtue of their relationship, the appellant had the right to be indemnified by the respondent.

Held:

[1] There was neither an express contract between the appellant and the respondent that the appellant was to be indemnified by the respondent, nor an implied contract from which an inference could be drawn that the parties intended such indemnity. The relationship between the appellant and the respondent clearly did not give rise to a state of circumstances to which the law attached a legal or equitable duty on the respondent to indemnify the appellant. Although the act of printing the articles, which turned out to be injurious to the plaintiff, was done at the request of the respondent, the appellant had failed to prove that the articles were not in themselves manifestly tortuous. Further, the appellant had failed to establish that the respondent had breached any duty of care to entitle the appellant for a right of indemnity in equity. The appellant, being a paid printer, ought to have been prudent of what it printed. It had printed the articles at its own peril and, therefore, was accordingly responsible and liable for the printing. (pp 63 f-h & 64 d)

[Appeal dismissed.]

Case(s) referred to:
Eastern Shipping Company, Ltd v. Quah Beng Kee [1923] AC 177 ***(foll)***
Lord Mayor, & c, of Sheffield v. Barclay & Ors [1905] AC 392 ***(foll)***

For the appellant - LY Chong; M/s Lee Hishammuddin
For the respondent - Amir Asree Meor Nordin; M/s Yaacob Mat Yin & Partners

Reported by Suresh Nathan

JUDGMENT

Nik Hashim J:

The Appeal

The appellant appealed against the decision of the learned Sessions Court judge dated 6 June 2000 whereby the said judge had dismissed with costs the appellant's notice claiming for indemnity (the notice) against the respondent. The appellant's notice at encl. 50 claimed against the respondent for a right to be indemnified against any order made by the sessions court pursuant to a defamation action by the plaintiff against four defendants for damages. In that action, the four defendants referred to include the respondent as the 3rd defendant and the appellant as the 4th defendant respectively. The plaintiff's claim against them was in respect of alleged defamatory words in the articles contained in the Buletin Utama newspaper dated 11 September 1994 and 18 September 1994 respectively which was printed by the appellant following the request of the respondent.

It is to be noted that as at the date of this appeal, the hearing of the defamation action has been completed but its decision has yet to be delivered by the sessions court.

The Contentions Of The Parties

The appellant contended that since at the material time it had no knowledge that the printing of the articles would amount to a tortuous act, and based on their relationship in that the respondent had requested the appellant to print the articles and the respondent only gave very short time frame to the appellant to print the said articles, believing that the respondent has an editing department that will edit all the writings which are unsuitable for the purpose of printing and in the usual cause of business depended on the respondent to edit and filter all the writings which are to be printed, the respondent therefore has an obligation to indemnify the appellant either in law or in equity.

Further, the appellant submitted that there is an implied contract under the contract between the respondent and the appellant whereby the respondent is required to indemnify the appellant based on their relationship and the way the dealings were carried out between them.

The respondent, on the other hand, objected to the appellant's notice and disputed all the facts and contentions raised and alleged by the appellant.

The Issue

The issue before the court is whether upon the facts in this case the appellant has a right of indemnity against the respondent.

The Findings Of The Court

The principles governing the question of indemnity are stated in the two leading cases:

(i) *Lord Mayor, & c, of Sheffield v. Barclay & Ors* [1905] AC 392 HL.

(ii) *Eastern Shipping Company, Ltd v. Quah Beng Kee* [1923] AC 177 PC.

In *Lord Mayor, supra,* a banker in good faith sent to a corporation a transfer of corporation stock that purported to be executed by T and H, the two registered holders of the stock, with a request to the corporation to register the stock in the name of the banker. The corporation in good faith noted upon this request and granted a fresh certificate to the banker who transferred the stock to third parties, and they were registered as holders. Afterwards it was discovered that T had forged H's signature, and H recovered against the corporation judgment whereby they were compelled to buy equivalent stock and register it in H's name, and to pay him the missing dividends with interest. In an appeal against the decision of the Court of Appeal which reversed the decision of the court below which held that the corporation were entitled to be indemnified by the banker, the House of Lords held that since both parties having acted *bona fide* and without negligence, the banker was bound to indemnify the corporation against the liability to H, upon an implied contract that the transfer was genuine. On the question of indemnity, Earl of Halsbury LC at p. 397 said:

> It is a general principle of law when an act is done by one person at the request of another which act is not in itself manifestly tortuous to the knowledge of the person doing it, and such act turns out to be injurious to the rights of a third party, the person doing it is entitled to an indemnity from him who requested that it should be done.

In *Eastern Shipping Company*, *supra*, the owners of a wharf granted the appellant company the right to berth their ships at it subject to payment and liability for any damage caused. The respondent, who was managing director of the appellant company, gave instructions, without the company's authority, that a ship that he himself had chartered for his own benefit should berth at the wharf. Owing to the unskilful way in which the ship was unloaded the wharf collapsed. In an action by the owners of the wharf against the appellant company for damages, they served a third-party notice upon the respondent, and claimed that he should indemnify them against any damages for which they should be held liable. In holding that the appellant company had a right of indemnity against the respondent, the Privy Council at p. 182 said:

> A right to indemnity generally arises from contract express or implied, but it is not confined to cases of contract. A right to indemnity exists where the relation between the parties is such that either in law or in equity there is an obligation upon the one party to indemnify the other. There are, for instance, cases in which the state of circumstances is such that the law attaches a legal or equitable duty to indemnify arising from an assumed promise by a person to do that which, under the circumstances, he ought to do. The right to indemnity need not arise by contract; it may (to give other instances) arise by statute; it may arise upon the notion of a request made under circumstances from which the law implies that the common intention is that the party requested shall be indemnified by the party requesting him; it may arise (to use Lord Eldon's words in *Waring v. Ward* (1); a case of vendor and purchaser) in cases in which the Court will "independent of contract raise upon his (the purchaser's) conscience an obligation to indemnify the vendor against the personal obligation" of the vendor.

Applying those principles to the facts of the present case, I hold that the appellant has failed to show he has the right to indemnity either by express or implied contract. There is no express contract between the appellant and the respondent that the appellant is to be indemnified by the respondent. Neither there is implied contract from which an inference can be drawn from the facts that the parties intended such indemnity. The relationship between the appellant and the respondent clearly does not give rise to a state of circumstances to which the law attaches a legal or equitable duty on the respondent to indemnify the appellant.

Unlike the relationships in the above two mentioned cases, the kind of relationship that exists between the appellant and the respondent in the instant case is no more than a relationship in a straightforward case of an ordinary business contract involving the printing of the articles by the appellant following the request of the respondent. Though the act of printing of the articles was

done at the request of the respondent and the articles turned out to be injurious to the plaintiff, the appellant has failed to prove that to the best of its knowledge that the articles were not in themselves manifestly tortuous. Further, the appellant has failed to establish any duty of care that was breached by the respondent to entitle the appellant for a right of indemnity in equity.

The appellant's complaints that it was given short time frame to print the articles, and that it depended on the respondent to edit and filter the articles before printing and that it had no knowledge of the tortuous nature of the articles are clearly without basis and have no merits. The complaints are mere allegations. They are not substantiated.

It is to be noted that the appellant was paid for the printing of the articles. Being a paid printer, the appellant ought to be prudent of what it prints. The appellant had printed the articles at it's own peril. Therefore, the appellant cannot escape the consequence of its act of printing the articles, and is accordingly responsible and liable for the printing. Thus, in the circumstances, the obligation on the part of the respondent to indemnify the appellant does not arise.

Hence, the notice was rightly dismissed by the Sessions Court judge. The appeal is dismissed with costs.